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Before the  
Federal Communications Commission  
Washington, D.C. 20554

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In the Matter of )  
)  
Implementation of the Telecommunications )  
Act of 1996 )  
)  
Telecommunications Carriers' Use of )  
Customer Proprietary Network Information )  
and other Customer Information )

CC Docket No. 96-115

**FURTHER COMMENTS OF BELL ATLANTIC<sup>1</sup> AND NYNEX<sup>2</sup>**

In the 1996 Act, Congress carefully balanced the complementary expectations of customers to keep information about their telephone service private and their need and desire to obtain one-stop shopping and a single point of contact for all of a company's services and products. The Commission in adopting rules in this proceeding must do so as well. It should find that Section 222 addresses customers' privacy expectations in regard to customer proprietary network information ("CPNI"); that Section 222 is the single controlling provision of the 1996

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<sup>1</sup> The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; and Bell Atlantic-West Virginia, Inc.

<sup>2</sup> The NYNEX Telephone Companies are New York Telephone Company and New England Telephone and Telegraph Company.

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Act that addresses the use or disclosure of CPNI; and that it allows release of CPNI by any carrier to its affiliates through a one-time notification and "opt-out" procedure.<sup>3</sup>

By contrast, Sections 272 and 274 of the Act address customers' expectations for one-stop shopping and their strong desire for a single point of contact for all products and services of a single company. Knowing these customer needs, Congress allowed Bell operating companies ("BOCs") to engage in joint marketing with their long distance and manufacturing affiliates ("272 affiliates") and with an electronic publishing joint venture, and to do so without triggering the statute's nondiscrimination requirements. The Commission should recognize this clear Congressional policy and the need to give a salesperson who undertakes joint marketing access to CPNI to carry out that policy, unless the customer has affirmatively withheld such access. Any attempt to apply nondiscrimination provisions of Section 272 or 274 to joint marketing activities would be inconsistent with the statute and with customers' expectations.

The initial rounds of comments provided extensive evidence addressing customer expectations.<sup>4</sup> Subsequent to the formal comment rounds, this evidence has been supplemented with a nationwide survey of public attitudes regarding telephone company use of CPNI conducted by Opinion Research Corporation and Professor Alan F. Westin, and an analysis of CPNI privacy issues by Privacy and Legislative Associates, Inc.<sup>5</sup> This study and analysis

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<sup>3</sup> If a customer has chosen to change local carriers, that choice is implicit authorization to disclose to the new carrier the CPNI needed to effect the change.

<sup>4</sup> *See, e.g.*, Reply Comments of Bell Atlantic (filed June 26, 1996) (citing several studies showing customer expectations).

<sup>5</sup> *See ex parte* letters to William F. Caton, Acting Secretary, from Gina Harrison, Pacific Telesis Group, dated January 24, 1997 and February 21, 1997.

confirm the public's interest in learning about products from all parts of a telephone company's corporate family and reveal the high level of consumer approval for intracorporate sharing of information for marketing purposes. They demonstrate the public's differing privacy expectations for affiliates and nonaffiliates and show that, so long as customers have the opportunity to "opt-out" of the general right of a carrier's affiliates to use CPNI to market and sell other products and services offered by the company, their privacy needs are fully met.

Several provisions of the 1996 Act show that Congress also recognized customers' privacy concerns and their desire to deal with fully informed integrated telecommunications providers (i.e., one-stop shopping). Section 222 addresses principally privacy expectations in a manner consistent with the studies that are discussed above. While that section requires a carrier to release CPNI to a third party upon an "affirmative *written* request by the customer,"<sup>6</sup> it allows the carrier (and its affiliates) to use CPNI to market and sell other services only with the "approval" of the customer, however that may be obtained.<sup>7</sup> The Commission should find, consistent with customer expectations, that approval can be obtained by one-time notice and the ability of a customer to opt-out.<sup>8</sup> Many parties proposed this approach in their initial comments in this proceeding,<sup>9</sup> and their arguments are as relevant today

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<sup>6</sup> 47 U.S.C. § 222(c)(2) (emphasis added). Written consent protects the customer's privacy expectations that information will not be disclosed to a company with which the customer has no prior business relationship. It also helps prevent fraudulent claims of customer consent, because a written consent is more easily auditable than a verbal authorization.

<sup>7</sup> 47 U.S.C. § 222(c)(1).

<sup>8</sup> *See* Comments of Bell Atlantic at 8-12, NYNEX Comments at 15-17 (filed June 11, 1996).

<sup>9</sup> *See, e.g.*, Comments of GTE at 6-8, AT&T at 12-16, and Pacific Telesis Group at 7-10.

as they were when originally filed. Even if a customer has chosen to restrict CPNI access, Congress allowed verbal consent to use the CPNI for the duration of an inbound telemarketing call to be given over the telephone during that call.<sup>10</sup> Of course, any entity that acts as an authorized sales agent of another carrier stands in the shoes of that carrier, and the agent may use information about the service it is authorized to market or sell, but only for that purpose.

While Section 222 provides the methodology that all carriers must use to release or withhold access to CPNI, three other provisions address the BOCs' ability to market jointly their local wireline services and certain other products and services in order to provide customers with one-stop shopping. These provisions are independent of the CPNI section and do not alter the opt-in/opt-out dichotomy for release of CPNI. First, Section 272(g) permits either a Bell operating company ("BOC") or its long distance and manufacturing separated affiliate ("272 affiliate") to engage in joint marketing and sales of local and long distance services, subject to certain conditions, without subjecting them to the strict nondiscrimination provisions of Section 272(c)(1).<sup>11</sup> Second, Section 274 allows joint marketing and sales between a BOC and an electronic publishing joint venture,<sup>12</sup> and permits the BOC to provide inbound telemarketing and referral services and to engage in teaming and business arrangements with an electronic publishing separated affiliate.<sup>13</sup> Third, in Section 601 of the 1996 Act, Congress reversed

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<sup>10</sup> 47 U.S.C. § 222(d)(3).

<sup>11</sup> *See* 47 U.S.C. § 272(g).

<sup>12</sup> *See* 47 U.S.C. § 274(c)(2)(C).

<sup>13</sup> *See* 47 U.S.C. § 274(c)(2)(A) and (B).

existing Commission rules by allowing the BOCs to engage in the joint marketing of wireline exchange services and commercial mobile radio services.<sup>14</sup>

CPNI is of significant importance in allowing the BOCs to meet these customer expectations for one-stop shopping for a complete range of telecommunications services and products. CPNI allows a carrier to target those customers who are most likely to be interested in particular new services and products, based upon their past purchasing habits, and to offer them packages of services tailored to their needs. Outbound telemarketing and direct mail solicitations today are the primary means for introducing customers to product and service packages. The inability to target an audience for particular products and services means that mass outbound telemarketing or direct mail solicitations would go to many customers who have little use or interest in the particular services being offered. This wastes the customers' time and makes effective marketing far more difficult. It also increases the carrier's marketing costs and, ultimately, raises prices to the customer. It was just to avoid these very dislocations that Congress enacted the joint marketing provisions.

With this background, Bell Atlantic and NYNEX offer a general framework that the Commission should adopt when implementing Section 222 and its interrelationship with Sections 272 and 274.<sup>15</sup> By adopting several overall policies, the Commission can implement these sections in a manner that is entirely consistent with both Congressional intent and customer expectations.

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<sup>14</sup> See P.L. No. 104-104, § 601(d).

<sup>15</sup> See Common Carrier Bureau Seeks Further Comment on Specific Questions in CPNI Rulemaking, Public Notice, DA 97-385 (rel. Feb. 20, 1997).

1. Section 222 does not restrict release of CPNI to any person, affiliate or nonaffiliate, that is acting as an authorized agent of the carrier from which the CPNI has been obtained.

In those instances, no "disclosure" of the CPNI has occurred under Section 222(c)(1), because the agent stands in the shoes of the carrier.<sup>16</sup> This result applies equally whether the agent is an affiliate of the BOC, including a 272 affiliate, or an unaffiliated third party. The agent, however, must agree to comply with the requirements of Section 222. For example, it may not use the CPNI to market a service other than that from which the CPNI is derived without the appropriate form of customer authorization. For an affiliate, including a 272 affiliate, this should take the form of one-time notification and opt-out.

2. The higher privacy concern regarding unauthorized release to third parties requires that such disclosure should be permitted only upon prior written consent.

As discussed above, customers have very different expectations regarding use of information by a company and its affiliates and release of that information to nonaffiliates. Congress provided in Section 222(c)(2) that CPNI must be released to third parties who have obtained prior written consent, and the Commission could reasonably adopt rules providing that CPNI should be released to nonaffiliated third parties *only* with such consent. Without such a requirement, customers' CPNI will be protected only to the degree that third parties truthfully represent that they have obtained customer approval. Given the pernicious history of slamming in the interexchange carrier industry, the Commission should recognize the need for some

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<sup>16</sup> Likewise, the agent may freely send the BOC CPNI regarding the BOC's services that it is authorized to market or sell.

measurable means of ensuring that customer expectations are being met. Written consent, which is retained by the requesting carrier and can be produced on request, provides an auditable paper trail. By contrast, the lower expectations regarding use by affiliates can be satisfied by an opt-out process.

3. The nondiscrimination provisions are inapplicable to any joint marketing activity being undertaken between a BOC and its 272 affiliate.

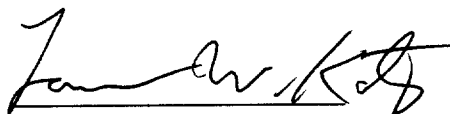
If CPNI is being provided by a BOC to its 272 affiliate (or vice versa) in order to carry out joint marketing, as authorized by Section 272(g)(1) or (2), Section 272(g)(3) dictates that this information cannot under any reasonable statutory construction form the basis for a claim of discrimination under Section 272(c)(1). Any activity of the 272 affiliate that does *not* involve joint marketing or sales would be subject to non-discrimination requirements, so that a BOC may not in such an instance provide authorized CPNI to the affiliate (i.e., where the customer has not opted out of disclosure under Section 222(c)(1)) under terms and conditions that are more favorable from those under which it releases authorized CPNI to a nonaffiliate (where the customer has given prior written consent under Section 222(c)(2)).

Any other result would unfairly handicap one of many competitors. As the Commission is well aware, the largest incumbent interexchange carriers have already positioned themselves to provide one-stop shopping to their customers and offer packages of services and products, often at a discount, because they know that this is what the public wants. They are using CPNI from their existing services to market these packages consistent with customer expectations.

Having set out this policy framework, in the Attachment Bell Atlantic and  
NYNEX address the specific questions posed in the Public Notice.

Respectfully Submitted,

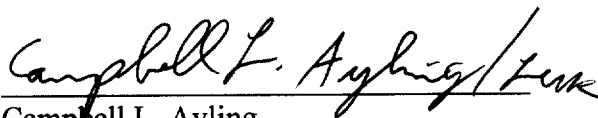
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Answers of Bell Atlantic and NYNEX To Specific Questions

**I. Interplay Between Section 222 and Section 272**

**A. Using, Disclosing, and Permitting Access to CPNI**

**1. Does the requirement in section 272(c)(1) that a BOC may not discriminate between its section 272 "affiliate and any other entity in the provision or procurement of ... services ... and information ..." mean that a BOC may use, disclose, or permit access to CPNI for or on behalf of that affiliate only if the CPNI is made available to all other entities?**

No. The BOC and its long distance and manufacturing separate affiliate ("272 affiliate") may engage in the joint marketing and sale of their respective services without violating the non-discrimination requirement of Section 272(c)(1). As a result, to the extent the BOC or its affiliate uses CPNI in connection with these joint marketing efforts, their ability to do so is *not* limited to instances where CPNI is available to all other entities.

Pursuant to Section 272(g)(3), Section 272(c)(1) applies only when the 272 affiliate is not marketing or selling the BOC's services pursuant to Section 272(g)(1) or when the BOC is not marketing or selling the 272 affiliate's services pursuant to Section 272(g)(2). And, as discussed in the cover pleading, Congressional policy favoring joint marketing dictates that the Commission broadly define the activities to be included in Section 272(g).

Section 272(g)(1) does not require arrangements with nonaffiliates that are permitted to market and sell the BOC's services to be on the same terms and conditions as those with the 272 affiliate. Accordingly, other entities that the BOC authorizes to market or sell its services need not be granted similar sales agency status, and would need to obtain the customer's approval in order to use BOC CPNI for any purpose.

When the BOC or its 272 affiliate is engaged in joint marketing or sale of local and long distance services, the sole provision that governs use of CPNI is Section 222. Under Section 222(c)(1), when the 272 affiliate is acting as an agent of the BOC pursuant to Section 272(g)(1), it stands in the shoes of the BOC for CPNI purposes. As a result, the 272 affiliate may access and use the BOC's CPNI to market or sell the services from which the CPNI was derived without customer approval. Under that same provision, however, customer approval is needed before the 272 affiliate may use the BOC's CPNI to market or sell the 272 affiliate's own services that are in a different "basket" from the BOC's services. As discussed in the cover pleading, the Commission should find that one-time notification and opt-out meets the approval requirement of Section 222(c)(1) for disclosures of CPNI to any affiliate for use in marketing services not in the basket from which the information is derived. Under Section 222(c)(2), CPNI disclosure to a nonaffiliate always requires prior written consent.

**If not, what obligation does the nondiscrimination requirement of section 272(c)(1) impose on a BOC with respect to the use, disclosure, or permission of access to CPNI?**

When the 272 affiliate is not engaging in joint marketing under Section 272(g), the BOC must treat the affiliate and other entities in a nondiscriminatory fashion under Section 272(c)(1) with respect to the manner that it provides CPNI to the 272 affiliate and the affiliate's competitors. This would mean that the 272 affiliate would not have access to BOC CPNI for any purpose, other than those set forth in Section 222(d),<sup>1</sup> without customer approval under Section 222(c)(1).

If the customer gives approval to release the CPNI only to the 272 affiliate, the BOC has no obligation to release CPNI to third parties, because the BOC is prohibited from releasing CPNI to nonaffiliates without the customer's approval. If the customer gives consent to release CPNI to one or more third parties and authorizes release to the 272 affiliate through notice and opt-out, the actual release to the 272 affiliate and authorized third parties must be on the same terms and conditions, *e.g.*, whatever price is charged for providing the CPNI must be the same for all.

**2. If a telecommunications carrier may disclose a customer's CPNI to a third party only pursuant to the customer's "affirmative written request" under section 222(c)(2), does the nondiscrimination requirement of section 272(c)(1) mandate that a BOC's section 272 affiliate be treated as a third party for which the BOC must have a customer's affirmative written request before disclosing CPNI to that affiliate?**

No. First, when the BOC or its 272 affiliate is engaged in joint marketing, the use of CPNI would not violate the nondiscrimination requirement of Section 272(c)(1). Second, when the 272 affiliate is not engaged in joint marketing under Section 272(g), the provision that governs the release of CPNI is Section 222. This is because the 272 affiliate is still an affiliate for the purposes of Section 222, which governs the manner in which customer approval must be obtained, and customer approval for the 272 affiliate's access to CPNI may be granted in the same manner as for any other BOC affiliate -- one-time notification and opt-out -- under Section 222(c)(1). Section 222(c)(2) merely dictates the circumstances under which the BOC "shall" release CPNI to third parties; it does *not* limit the ability of the BOC to release CPNI after obtaining other forms of customer approval, and, in particular, does not do so with respect to affiliates.

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<sup>1</sup> Section 222(d) allows a telecommunications carrier to use, disclose, or permit access to CPNI for a number of purposes, including initiating, rendering, billing and collecting for telecommunications services, protecting rights or property of the carrier, and protecting users of telecommunications services from fraudulent, abusive, or unlawful use of or subscription to such services. 47 U.S.C. § 222(d).

**3. If a telecommunications carrier may disclose a customer's CPNI to a third party only pursuant to the customer's "affirmative written request" under section 222(c)(2), must carriers, including interexchange carriers and independent local exchange carriers (LECs), treat their affiliates and other intra-company operating units (such as those that originate interexchange telecommunications services in areas where the carriers provide telephone exchange service and exchange access) as third parties for which customers' affirmative written requests must be secured before CPNI can be disclosed? Must the answer to this question be the same as the answer to question 2?**

No. As discussed in the response to question 2, Section 222(c)(2) does not require any carrier to obtain written consent before releasing CPNI to an affiliate. Because Section 222, which applies to all carriers, is the sole provision governing use and release of CPNI, the rule must be the same for BOCs, independent local exchange carriers, and interexchange carriers alike.

#### **B. Customer Approval**

**4. If sections 222(c)(1) and 222(c)(2) require customer approval, but not an affirmative written request, before a carrier may use, disclose, or permit access to CPNI, must a BOC disclose CPNI to unaffiliated entities under the same standard for customer approval as is permitted in connection with its section 272 affiliate? If, for example, a BOC may disclose CPNI to its section 272 affiliate pursuant to a customer's oral approval or a customer's failure to request non-disclosure after receiving notice of an intent to disclose (i.e., opt-out approval), is the BOC required to disclose CPNI to unaffiliated entities upon the customer's approval pursuant to the same method?**

As discussed above, the requirements for customer approval of release of CPNI to affiliates are governed exclusively by Section 222. The Commission should find that Section 222(c)(1) allows disclosure of a carrier's CPNI to any affiliate of that carrier, in connection with services other than the service from which the CPNI was derived, with a one-time customer notification and the ability to opt-out. By contrast, Section 222(c)(2) describes the circumstances under which a carrier must release CPNI to a third party. The nondiscrimination provisions of Section 272(c) do not apply to the Section 222 customer approval process.

**5. If sections 222(c)(1) and 222(c)(2) require customer approval, but not an affirmative written request, before a carrier may use, disclose, or permit access to CPNI, must each carrier, including interexchange carriers and independent LECs, disclose CPNI to unaffiliated entities under the same standard for customer approval as is permitted in connection with their affiliates and other intra-company operating units?**

Please see the response to Question 4. Note that Section 222 requires that all carriers and their affiliates be treated the same for purposes of access to CPNI. Therefore, the customer approval rules that are adopted under that section apply equally to the BOCs, their authorized agents, and

their affiliates (including a 272 affiliate) and to other carriers, their authorized agents, and their affiliates.

**6. Must a BOC that solicits customer approval, whether oral, written, or opt-out, on behalf of its section 272 affiliate also offer to solicit that approval on behalf of unaffiliated entities? That is, must the BOC offer an "approval solicitation service" to unaffiliated entities, when it provides such a service for its section 272 affiliate? If so, what specific steps, if any, must a BOC take to ensure that any solicitation it makes to obtain customer approval does not favor its section 272 affiliate over unaffiliated entities? If the customer approves disclosure to both the BOC's section 272 affiliate and unaffiliated entities, must a BOC provide the customer's CPNI to the unaffiliated entities on the same rates, terms, and conditions (including service intervals) as it provides the CPNI to its section 272 affiliate?**

The 1996 Act contains no requirement for the BOC to provide an "approval solicitation service." First, BOC solicitations to release CPNI will be made to facilitate joint marketing of the services of the BOC and its 272 affiliate. Therefore, that solicitation will be integral to Section 272(g)(1) or (2) joint marketing activities. Section 272(g)(3) specifies that such activities are exempt from the nondiscrimination provisions of Section 272(c). Second, Section 222, the only section that addresses CPNI disclosure, treats all carriers the same, so that there is no basis for imposing any more stringent CPNI solicitation obligation on the BOCs than on other carriers. Third, the nondiscrimination provisions of Section 272(c) apply only to a BOC's "dealings with its affiliate." Solicitation of customer approval to use or disclose CPNI involves a "dealing" with a customer in seeking permission to disclose CPNI to the BOC's affiliates, not a "dealing with its affiliate." Only after a customer (by not opting out) grants approval, will the BOC "deal" with its affiliate when it discloses the information to that affiliate. At that time, in any instance where Section 272(c) applies, the BOC is under a nondiscrimination obligation to release the CPNI to any authorized third party under the same terms, such as price.

### **C. Other Issues**

**7. If, under sections 222(c)(1), 222(c)(2), and 272(c)(1), a BOC must not discriminate between its section 272 affiliate and non-affiliates with regard to the use, disclosure, or the permission of access to CPNI, what is the meaning of section 272(g)(3), which exempts the activities described in sections 272(g)(1) and 272(g)(2) from the nondiscrimination obligations of section 272(c)(1)? What specific obligations with respect to the use, disclosure, and permission of access to CPNI do sections 222(c)(1) and 222(c)(2) impose on a BOC that is engaged in the activities described in sections 272(g)(1) and 272(g)(2)?**

No such unique obligations exist. First, neither Section 222(c)(1) nor Section 222(c)(2) imposes such a nondiscrimination obligation. In fact, those provisions permit an opt-out approach for release of CPNI to a carrier's affiliates, including a BOC's 272 affiliate. Moreover, if the CPNI is to be used to provide the service from which it was derived (including when a 272 affiliate is an authorized sales agent of the BOC), no approval is required. By contrast, Section 222(c)(2)

merely establishes the circumstances under which the BOC is *required* to disclose CPNI to third parties. Nothing in that section requires or permits any different treatment of a BOC's 272 affiliate and any other affiliate of any other carrier. Second, as discussed in the cover pleading, Congress intended that a BOC would be free to engage in joint marketing of its services with the services and products of its long distance, manufacturing, wireless, and electronic publishing joint venture affiliates. To facilitate such joint marketing, Section 272(g)(3) exempts joint marketing activities from the nondiscrimination provisions of Section 272(c). Therefore, if disclosure and use of CPNI is in connection with the joint marketing of the products and services of the BOC and its 272 affiliate, Section 272(c) is inapplicable.

**8. To what extent is soliciting customer approval to use, disclose, or permit access to CPNI an activity described in section 272(g)? To the extent that a party claims that CPNI is essential for a BOC or section 272 affiliate to engage in any of the activities described in section 272(g), please describe in detail the basis for that position. To the extent that a party claims that CPNI is not essential for a BOC or section 272 affiliate to engage in those activities, please describe in detail the basis for that position.**

As discussed above, the procedures governing release of CPNI are established in Section 222, not Section 272. It is vitally important, however, that an entity that engages in joint marketing have access to information about all the services it is marketing. As an agent of the BOC, as permitted under Section 272(g)(1), the 272 affiliate will already have access to CPNI relating to the BOC's services that it is selling or marketing on behalf of the BOC. As discussed in the cover pleading, joint marketing would be a nullity if the Commission's rules were to prohibit the salesperson who is marketing or selling the BOC's service, and who therefore has access to the BOC's CPNI, from selling the long distance service. The customer would be deprived of the single point of contact that is crucial to joint marketing. Incumbent interexchange carriers ("IIXCs"), such as AT&T and MCI, are fully aware of this market need and are, therefore, already selling their products and services on an integrated basis. Knowing this, Congress gave the BOCs' 272 affiliates the same right. A different reading of Section 272(g) would be contrary to the express provisions of the Act and would seriously inhibit the BOCs' ability to compete against entrenched IIXCs.

**9. Does the phrase "information concerning [a BOC's] provision of exchange access" in section 272(e)(2) include CPNI as defined in section 222(f)(1)? Does the phrase "services ... concerning [a BOC's] provision of exchange access" in section 272(e)(2) include CPNI-related approval solicitation services? If such information or services are included, what must a BOC do to comply with the requirement in section 272(e)(2) that a BOC "shall not provide any ... services ... or information concerning its provision of exchange access to [its affiliate] unless such ... services ... or information are made available to other providers of interLATA services in that market on the same terms and conditions"?**

Solicitation of end users for release of CPNI is not included in Section 272(e)(2). That provision addresses only the BOCs' provision of "exchange access" services, which are defined in Section

3(16) as "the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services." Such services are provided to other telecommunications carriers, not to end users, and enable those carriers to provide toll services to their customers. To the extent that there is any CPNI associated with those services, it is information regarding the access service provided to the carrier, not any end user service information. Section 222(b) prohibits a carrier that obtains information from another carrier (such as by virtue of being the provider of exchange access services) from using that information for its own marketing efforts. Therefore, carriers' CPNI is already fully protected, and it would be redundant to read CPNI into the information addressed in Section 272(e)(2). The Commission should find that Section 272(e)(2) relates only to technical and operational information regarding the access services, not to CPNI.

**10. Does a BOC's seeking of customer approval to use, disclose, or permit access to CPNI for or on behalf of its section 272 affiliate constitute a "transaction" under section 272(b)(5)? If so, what steps, if any, must a BOC and its section 272 affiliate take to comply with the requirements of section 272(b)(5) for purposes of CPNI?**

The seeking of customer approval is an arrangement between a BOC and its customer in order to meet a regulatory requirement, not a transaction with an affiliate.

## **II. Interplay Between Section 222 and Section 274**

### **A. Threshold Issues**

**13. To what extent, if any, does the term "basic telephone service information," as used in section 274(c)(2)(B) and defined in section 274(i)(3), include information that is classified as CPNI under section 222(f)(1)?**

The term "basic telephone service information" can reasonably be defined as including CPNI, because the definition of that term in Section 274(i)(3) includes "customer information." However, the term appears only in Section 274(c)(2)(B), which addresses teaming and business arrangements. Whether or not CPNI is included in basic telephone service information affects no other part of Section 274. Therefore, it is not a "threshold issue" in interpreting the relationship between Sections 222 and other parts of 274.

### **B. Using, Disclosing, and Permitting Access to CPNI**

#### **(i). Section 274(c)(2)(A) -- Inbound Telemarketing or Referral Services**

**14. Does section 274(c)(2)(A) mean that a BOC that is providing "inbound telemarketing or referral services related to the provision of electronic publishing" to a separated affiliate, electronic publishing joint venture, or affiliate may use, disclose, or permit access**

**to CPNI in connection with those services only if the CPNI is made available, on nondiscriminatory terms, to all unaffiliated electronic publishers who have requested such services?**

No. Section 274(c)(2)(A) imposes no independent requirement to disclose CPNI or solicit its release except during an inbound telemarketing call, under the circumstances described above. Otherwise, access to CPNI is governed by other provisions of Section 222, which require prior written consent before CPNI may be released to a nonaffiliate, or someone acting for a nonaffiliate (in this case, the BOC).

**If not, what obligation does the nondiscrimination requirement of section 274(c)(2)(A) impose on a BOC with respect to the use, disclosure, or permission of access to CPNI?**

This provision simply means that, if as part of providing inbound telemarketing or referral services to its affiliate, a BOC asks the customer's permission to access CPNI during the call, the BOC must ask for the same permission when providing a similar service for a nonaffiliate. If the customer consents, the BOC may use the CPNI in performing telemarketing or referral services for the duration of the call pursuant to Section 222(d)(3).

**(ii). Section 274(c)(2)(B) -- Teaming or Business Arrangements**

**15. To the extent that basic telephone service information is also CPNI, should section 274(c)(2)(B) be construed to mean that a BOC, engaged in an electronic publishing "teaming" or "business arrangement" with "any separated affiliate or any other electronic publisher," may use, disclose, or permit access to basic telephone service information that is CPNI in connection with that teaming or business arrangement only if such CPNI is also made available on a nondiscriminatory basis to other teaming or business arrangements and unaffiliated electronic publishers?**

No. Disclosure of CPNI to a member of a teaming or business arrangement for use other than in connection with that arrangement is governed by the provisions of Section 222(c).

**If not, what obligation does the nondiscrimination requirement of section 274(c)(2)(B) impose on a BOC with respect to the use, disclosure, or permission of access to CPNI?**

The language of Section 274(c)(2)(B) requires that any agreement establishing an electronic publishing teaming or business arrangement involving the BOC and an electronic publisher, whether affiliated or unaffiliated, must contain a similar provision regarding disclosure of basic telephone service information. In the case of CPNI, the teaming or business arrangement itself should be treated as an affiliate of the BOC for Section 222 CPNI purposes, and customer approval for release of CPNI to it should be by one-time notification and opt-out. The non-BOC participants in the teaming or business arrangement must, however, be prohibited from using the CPNI for purposes other than in connection with the electronic publishing activities of that

arrangement unless the customer has separately approved release to the particular entity (in the case of a nonaffiliate, prior written consent; in the case of an affiliate, one-time notice and opt-out).

**16. If section 222(c)(2) permits a BOC to disclose a customer's CPNI to a third party only pursuant to the customer's "affirmative written request," does section 274(c)(2)(B) require that the entities, both affiliated and non-affiliated, engaged in section 274 teaming or business arrangements with the BOC be treated as third parties for which the BOC must have a customer's affirmative written request before disclosing CPNI to such entities?**

No. Please see the response to question 15 above.

**(iii). Section 274(c)(2)(C) -- Electronic Publishing Joint Ventures**

**17. Should section 274(c)(2)(C) be construed to mean that an electronic publishing joint venture be treated as a third party for which the BOC must have a customer's approval, whether oral, written, or opt-out, before disclosing CPNI to that joint venture or to joint venture partners?**

As with a teaming or business arrangement, the electronic publishing joint venture should be considered an affiliate for CPNI purposes. This means that it may obtain access to BOC CPNI in the same manner as any other BOC affiliate under Section 222(c)(1), i.e., through a one-time notice and opt-out. Non-BOC members of the joint venture may not use the CPNI for any purpose other than in connection with the joint venture unless the customer has consented to release to the particular entity (in the case of a nonaffiliate, prior written consent; in the case of an affiliate, one-time notice and opt-out).

**C. Customer Approval**

**(i). Section 274(c)(2)(A) -- Inbound Telemarketing or Referral Services**

**18. Must a BOC that is providing inbound telemarketing or referral services to a "separated affiliate, electronic publishing joint venture, affiliate, or unaffiliated electronic publisher" under section 274(c)(2)(A) obtain customer approval pursuant to section 222(c) before using, disclosing, or permitting access to CPNI on behalf of such entities? If so, what forms of customer approval (oral, written, or opt-out) would be necessary to permit a BOC to use a customer's CPNI on behalf of each of these entities in this situation? What impact, if any, does section 222(d)(3) have on the forms of customer approval in connection with section 274(c)(2)(A) activities?**

A BOC that performs inbound telemarketing or referral services in connection with electronic publishing must obtain the customer's permission before using BOC CPNI to perform those services. That permission may be obtained orally, during the telemarketing call, to remain valid



for the duration of the call, as specified in Section 222(d)(3). If customer consent has previously been obtained pursuant to Section 222(c)(1) or (2) to release CPNI to the entity for which the telemarketing or referral service is being performed (in the case of a nonaffiliate, prior written consent; in the case of an affiliate, one-time notice and opt-out), no additional consent is needed.

**19. Must a BOC that solicits customer approval, whether oral, written, or opt-out, on behalf of its separated affiliate or electronic publishing joint venture also offer to solicit that approval on behalf of unaffiliated entities? That is, must the BOC offer an "approval solicitation service" to unaffiliated electronic publishers when it provides such a service for its section 274 separated affiliates, electronic publishing joint ventures, or affiliates under section 274(c)(2)(A)?**

No. The BOCs have no general obligation under Section 274 to solicit customers to obtain CPNI release for any entity, affiliated or nonaffiliated.

**What impact, if any, does section 222(d)(3) have on the BOC's obligations under section 274(c)(2)(A) with regard to the solicitation of a customer's approval during a customer-initiated call?**

Release of CPNI is governed exclusively by Section 222, which the Commission should find allows one-time notification and customer approval in the form of not opting-out in the case of an affiliate under Section 222(c)(1) but always requires prior written consent in the case of a nonaffiliate under Section 222(c)(2). Section 274(c)(2)(A) simply requires that inbound telemarketing and referral services be available to affiliated and nonaffiliated electronic publishers on nondiscriminatory terms.

**What specific steps, if any, must a BOC take to ensure that any solicitation it makes to obtain customer approval does not favor its section 274 separated affiliates or electronic publishing joint ventures or affiliates over unaffiliated entities? If the customer approves disclosure to both the BOC's section 274 separated affiliates or electronic publishing joint ventures or affiliates and unaffiliated entities, must a BOC provide the customer's CPNI to the unaffiliated entities on the same rates, terms, and conditions (including service intervals) as it provides the CPNI to its section 274 separated affiliates or electronic publishing joint ventures or affiliates?**

Release of CPNI is governed by Section 222, not 274. If a customer consents to release of CPNI to both affiliated and nonaffiliated electronic publishers, the release must be made to both on nondiscriminatory terms, *e.g.*, at the same price.

**20. To the extent that sections 222(c)(1) and 222(d)(3) require customer approval, but not an affirmative written request, before a carrier may use, disclose, or permit access to CPNI, must a BOC disclose CPNI to unaffiliated electronic publishers under the same standard for customer approval as is permitted in connection with its section 274 separated affiliate,**

**electronic publishing joint venture, or affiliate under section 274(c)(2)(A)? If, for example, a BOC may disclose CPNI to its section 274 separated affiliate pursuant to the customer's oral or opt-out approval, is the BOC required to disclose CPNI to unaffiliated entities upon the customer's approval pursuant to the same method?**

CPNI solicitation and release are addressed in Section 222, not 274, and Section 222 applies equally to all carriers. If a customer has approved release of CPNI to affiliated or nonaffiliated entities under the various provisions of Section 222, the nondiscrimination provisions in Section 274 (c)(2)(A) require that the release must be made to both on nondiscriminatory terms, *e.g.*, at the same price.

**(ii). Section 274(c)(2)(B) -- Teaming or Business Arrangements**

**21. Must a BOC, that is engaged in a teaming or business arrangement under section 274(c)(2)(B) with "any separated affiliate or with any other electronic publisher," obtain customer approval before using, disclosing, or permitting access to CPNI for such entities? What forms of customer approval (oral, written, or opt-out) would be necessary to permit a BOC to use a customer's CPNI on behalf of each of these entities in this situation?**

As discussed in the response to question 15, the electronic publishing teaming or business arrangement itself should be considered an affiliate for CPNI purposes, and may, therefore, obtain access to the BOC's CPNI on a one-time notification and opt-out basis and use that information in connection with its electronic publishing activities. The non-BOC members of the arrangement may not use the CPNI for other purposes except with customer consent under Section 222 (in the case of a nonaffiliate, prior written consent; in the case of an affiliate, one-time notice and opt-out).

**22. Must a BOC that solicits customer approval, whether oral, written, or opt-out, on behalf of any of its teaming or business arrangements under section 274(c)(2)(B) also offer to solicit that approval on behalf of other teaming arrangements and unaffiliated electronic publishers? That is, must the BOC offer an "approval solicitation service" to unaffiliated electronic publishers and teaming arrangements when it provides such a service for any of its teaming or business arrangements under section 274(c)(2)(B)? If so, what specific steps, if any, must a BOC take to ensure that any solicitation it makes to obtain customer approval does not favor its electronic publishing teaming or business arrangements over unaffiliated entities? If the customer approves disclosure to both the BOC's electronic publishing teaming or business arrangements and unaffiliated entities, must a BOC provide the customer's CPNI to the unaffiliated entities on the same rates, terms, and conditions (including service intervals) as it provides the CPNI to its electronic publishing teaming or business arrangements?**

There is no obligation to solicit approval to release CPNI expressed or implied in Section 274(c)(2)(B). As discussed above, all teaming or business arrangements would be treated as affiliates for CPNI purposes. Without customer approval under Section 222(c)(1) or (2), non-BOC team members may not use BOC CPNI for any other purpose.

**23. To the extent that sections 222(c)(1) and 222(c)(2) require customer approval, but not an affirmative written request, before a carrier may use, disclose, or permit access to CPNI, must a BOC disclose CPNI to unaffiliated electronic publishers under the same standard for customer approval as is permitted in connection with its teaming or business arrangements under section 274(c)(2)(B)? If, for example, a BOC may disclose CPNI to a section 274 separated affiliate with which the BOC has a teaming arrangement pursuant to the customer's oral or opt-out approval, is the BOC likewise required to disclose CPNI to unaffiliated electronic publishers or teaming arrangements upon obtaining approval from the customer pursuant to the same method?**

Please see the answer to questions 15, 21 and 22.

#### **D. Other Issues**

**24. Does the seeking of customer approval to use, disclose, or permit access to CPNI for or on behalf of its section 274 separated affiliate or electronic publishing joint venture constitute a "transaction" under section 274(b)(3)?**

No. The seeking of customer approval is an arrangement between a BOC and its customer in order to meet a regulatory requirement. It is not a "transaction" under Section 274(b)(3).

**If so, what steps, if any, must the BOC and its section 274 separated affiliate or electronic publishing joint venture take to comply with the requirements of section 274(b)(3) for purposes of CPNI?**

Any actual agreement entered into between a BOC and its electronic publishing separated affiliate or electronic publishing joint venture is subject to the provisions of Section 274(b)(3).

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of March, 1997 a copy of the foregoing "Further Comments of Bell Atlantic and NYNEX" was served by hand on the parties on the attached list.

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